File No. 220

1929.

Collection No. V

V/466/27 Impson Residency

Pros. Serial Nos.

Subject.

Central Board of Revenue circulars

Previous References.

Later References.

DCFP—678S&P—(G 1085)—10-3-37—1,000,000.

Circular No. 18 of 1929.
R. Dis. No. 531-I. T./29.

CENTRAL BOARD OF REVENUE.

New Delhi, the 3rd December 1929.

FROM

V. S. SUNDARAM, ESQ.,
Secretary, Central Board of Revenue.

To

THE COMMISSIONERS OF INCOME-TAX,
1. Madras,
2. Bombay.
3. Bengal,
4. United Provinces,
5. Punjab, North-West Frontier and Delhi Provinces,
6. Burma,
7. Bihar and Orissa,
8. Central Provinces,
9. Assam,
10. Coorg,
11. Baluchistan,
12. Ajmer-Merwara,
13. Civil and Military Station, Bangalore,
14. Mount Abu,

and

COLLECTORS OF CUSTOMS,
15. Madras,
16. Bombay,
17. Calcutta,
18. Karachi,
19. Rangoon.

SIR,

Non-residents—Temporary trading—Assessment of. Board's Circular C. No. 531 (i)-I. T./29 / 531 (ii)-I. T./29, dated the 11th July 1929.

Your letter No.

1. C. R. 413/29, dated the 19th September 1929,
2. R. B. 189/29, dated the 13th August 1929,
3. 6881-C. T., dated the 3rd September 1929,
4. 44629/I. T., dated the 25th November 1929,
5. A.-11 (XIX)-1/29, dated the 28th September 1929,
6. 14249/3-I.-73, dated the 28th October 1929,
7. A.-227/5, dated the 10th September 1929,
8. 146/21, dated the 15th August 1929,
9. 2520, dated the 21st September 1929,
10. C.-1-1760/29, dated the 10th August 1929,
11. 3830-T., dated the 5th September 1929,

12. 11982/III-101 of 1929, dated the 17th August 1929,
13. 7922/220/1929, dated the 17th September 1929,
14. 123-V. DM. of 1929, dated the 24th July 1929,

and

15. 1610-29-Cs., dated the 9th September 1929,
16. 4397 of 1929, dated the 13th November 1929,
17. 304, dated the 3rd August 1929,
18. 1562, dated the 30th July 1929,
19. 600 of 1929, dated the 12th August 1929.

I am directed to say that the Board has decided not to proceed further with this matter at present because the amount of revenue that we should be likely to secure does not seem sufficient to justify our recommending the legislation that would be necessary.

I have the honour to be,

SIR,

Your most obedient servant,

Secretary, Central Board of Revenue.

No. 501 dt 17-1-1930.

Copy forwarded to the Assistant Commr. of Income-tax, C & M Station, Bangalore, for information.

For SECRETARY TO THE RESIDENT.

GIPD—749 CBR—16-12-29—1,185.

L 2

Central Board of Revenue.

New Delhi, the 7th December 1929.

CORRIGENDUM.

RESIDENT'S OFFICE, Bangalore. Dy. 12528 18/12/29 220 29

S.N.11 (K) Board's Circular 14 of 1929
R.Dis.No.701-I.T./28
dated the 14th November 1929.

In the title to the above circular, substitute "Set off - when permissible" for "when permissible-Set off".

13/12/29

Secretary, Central Board of Revenue.

R.Dis.No.701-I.T./28.

Copy forwarded to all Commissioners of Income-tax.

No. 502 dt 17-1-1930.

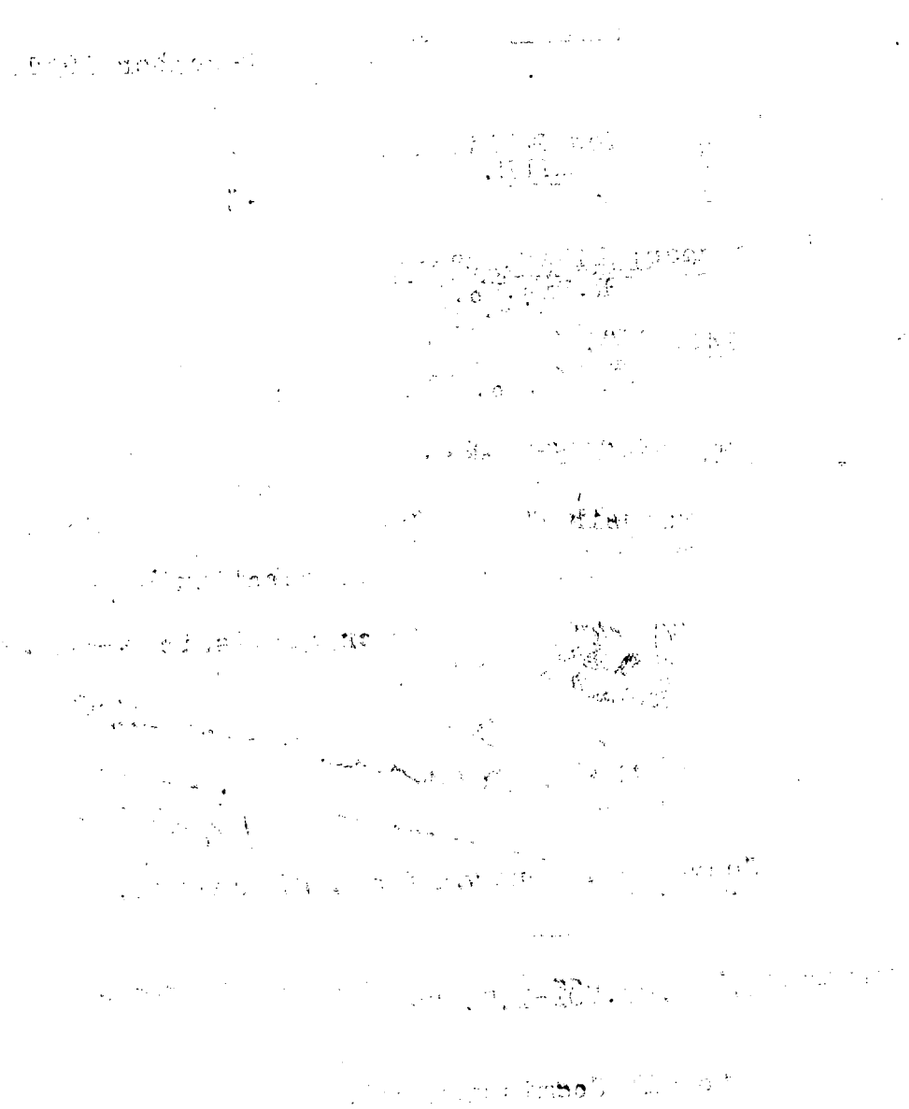
Copy forwarded to the Assistant Commr. of Income-tax, C & M Station, Bangalore, in continuation of endorsement from this office No.11316. dated the 3rd December, 1929.

(K) S.N.11 (reverse)

11/1

For SECRETARY TO THE RESIDENT.

AMS. 11/12/29. 11.1.30



D. O. R. Dis. No. 505 (i)-I.T./29.

CENTRAL BOARD OF REVENUE.

New Delhi, the 22nd November 1929.

My dear Senneck,

Reference to High Court - Madras - Lands - Purchase and Sale of - Profits from - Business Income - Inclusion of in - R.M.V.R.M. Virappa Chettiar - Karaikudi.

Your D.O. No. Nil (C. No. 800-28 (?)), dated 14.11.29.

Thanks. Of course there is nothing in this decision that need affect your general policy in dealing with such cases, but in future attention should be paid to the points in regard to which the High Court thought the evidence in this case defective.

Yours sincerely,

A. TOTTENHAM, -22-11-29.

To

F. H. Senneck, Esq., I.C.S.,
Commissioner of Income-tax, Madras.

Circular 16 of 1929.

R. Dis. No. 505 (ii)-I.T./29.

Copy forwarded to all Commissioners of Income-tax (except Madras) for information.

By order, etc.,

Secretary, Central Board of Revenue.

503

17-1-30

From

Secretary to the Resident
&
Commr. of Income-tax,
C & M Station, Bangalore

To

The Secretary',

Central Board of Revenue

Lands- Purchase and sale of --Profits from - Business income- Inclusion of in - R.M.V.R.M. Virappa Chettiar, Karaikudi.

Sir,

I am directed to ~~[illegible]~~

~~[illegible]~~

refer to your Circular No. 16 of 1929 R.Dis. No.505(ii) -I.T./29 dt 22-11 Nov. 1929.

and to request that I may be favoured with a copy of the order in the case mentioned.

I have etc.

For SECRETARY TO THE RESIDENT
&
COMMR. OF INCOME-TAX

5N3 - slip I

11.1.30

11.1.30

OFFICE OF THE COMMISSIONER OF INCOME TAX IN MYSORE.
Recd. 28/1/30.
No.
Enclosures, if any.

K.Dis.No.I.T./30.
CENTRAL BOARD OF REVENUE.

New Delhi, the 25th January 1930.

From

V. S. Sundaram, Esquire,
Secretary, Central Board of Revenue,

To

The Commissioner of Income-tax,
M y s o r e.
Bangalore.

Sir,

Reference to High Court - Madras-Lands - Purchase and sale of - Business income - Inclusion of, in - R.M.V.R.M. Veerappa Chettiar - Copy of judgment - Supply of - . Your letter No. 503 Enc. dated 17th January 1930. 273/1928

I am directed to enclose a copy of the High Court's order asked for in your letter quoted above. I am however to request that in future you might obtain copies of judgments direct from the Commissioners of Income-tax concerned.

I have the honour to be,

Sir,

Your most obedient servant,

Secretary, Central Board of Revenue.

AMS/25.1.30.

COURT OF JUDICATURE AT MADRAS.
IN THE BINARY ORIGINAL CIVIL JURISDICTION.
DAY, the FIFTEENTH DAY OF OCTOBER, 1929.

THE HONOURABLE MR. JUSTICE KUMARASWAMI SASTRI
THE HONOURABLE MR. JUSTICE CURGENVEN AND
THE HONOURABLE MR. JUSTICE PAKENHAM WALSH.

O.P.No.262 of 1928.

In the matter of the Indian Income-tax Act XI of 1922.

and

In the matter of the assessment of R.M.V.R.M.Virappa Chettiar for the year, 1927-28.

Between:-

R.M.V.R.M.Virappa Chettiar — Petitioner

and

The Commissioner of Income-tax, Madras. — Respondent.

Judgment.

(Judgment of the Court was delivered by Kumaraswami Sastri).

The question referred to us is, whether there is any evidence to justify the finding that the purchase and sale of lands formed part of any business which the assessee was carrying on. The Income-tax Officer in this case proceeds on what he says is a well-known fact that in the course of their business abroad and as a part of it Nattukottai Chettis purchase land and other properties when they are cheap and hold them until such time as they are able to sell them at a good price and that during the period these properties are in their possession the income derived, if any, on the one hand and the expense of maintenance, if any, on the other, are included in their business accounts. In the present case there is no evidence afforded by the books that the income derived and the expenses incurred were included and made part of the firm's business accounts. All that appears is that these Chettis purchased one item of property in 1919 and another item of property in 1924 and that these were sold in 1926-27. On this fact and on this general presumption which the Income-tax Officer thinks fit to draw in these cases he has treated the difference in prices as a business profit. There is no evidence about what was done with the income. The books are not before the Income-tax Officer and

and there is nothing to show that the income and expenses were, as a matter of fact, brought into the partnership accounts. There is nothing to show that the profits were madd by the operation of the Petitioner's money lending business and were not in the nature of capital profits on the sale of an investment. As pointed out by Sankey,J. in T.Beymond & Co. Ltd. v. Ogg. 7 Tax Cases 125 ordinarily profit arising out of an isolated transation outside the scope of the business does not fall to be chargeable as a business profit. On these facts wex are not prepared to say that there is legal evidence on which the assessee can be assessed on the ground that it is part of the profits of the business carried on. The petitioner will be entitled to his costs Rs.250.

Intd. C.V.K.
" A.J.C.
" P.W.
15-10-29.

Certified to be a true copy

Dated this 6th day of November,1929.

Sd. W.Govinda Pillay,
Bench Clerk, O.S.

(True copy)

Sd.S.L.Sastri,

Personal Asst. to the Commissioner of Income-tax.

[R.O.106(a).]

6

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 21/3/1930.

No. 2389 Enclos. 2

A copy of the marginally* noted papers is forwarded to the Assistant Commissioner of Income-tax C & M Station, Bangalore, for information

(1) Circular No. 16 of 1929
R.Dis. 505(ii)- I.T./29
dated the 22nd November, 1929
from the Central Board of Revenue

N. 3 (I)

(2) Judgment in O.P. No.262 of 1928 of the High Court of Madras

Encl. to para

1212—16-3-1929—5,000—RPB.

14/3

for Secretary to the Resident.

14/3

V.9/4(1)3

Circular No. 3 of 1930.
R. Dis. No. 768-(ii)-I. T./29.

CENTRAL BOARD OF REVENUE.

New Delhi, the 15th March 1930.

3631
31/3/30
20/3

CIRCULAR.

Bad debts—Deduction when permissible.

A bad debt or irrecoverable loan may not be allowed as a deduction unless :—

(*a*) the assessee has written it off his accounts,

(*b*) it has actually become bad or irrecoverable, and

(*c*) it actually became so *in the previous year.*

2. Whether it has become bad or irrecoverable and if so when, are questions of fact. It is for the Income-tax Officer to determine them. The word "Irrecoverable" in the term "irrecoverable loan" must be given a wider sense than its technical legal meaning.

3. The fact that a loan or other debt has become *legally* "irrecoverable" is not conclusive evidence that it is *actually* irrecoverable or "bad". But the fact that a loan or other debt is legally irrecoverable creates a strong presumption that as soon as it became so it also became *actually* irrecoverable or "bad", and that presumption must prevail unless the assessee is able to rebut it to the satisfaction of the Income-tax Officer.

5770
10/9/28 Reg V

4. This supersedes Board's circular No. 24 of 1928, R. Dis. No. 624-I. T./28, dated the 22nd August 1928.

26.3.30

for *Secretary, Central Board of Revenue.*

To

All Commissioners of Income-tax.

Draft submitted.

CBR
21/4/30

23/4

GIPD—1192 CBR—24-3-30—1160.

6. Bangalore

Circular No. 3 of 1930.
R. Dis. No. 768-(ii)-I, T./29.

CENTRAL BOARD OF REVENUE.

New Delhi, the 15th March 1930.

CIRCULAR.

Bad debts—Deduction when permissible.

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4. This supersedes Board's circular No. 24 of 1928, R. Dis. No. 624-I. T./28, dated the 22nd August 1928.

V. S. SUNDARAM,
Secretary, Central Board of Revenue.

To

All Commissioners of Income-tax.

GIPD—1192 CBR—24-3-30—1160.

Circular No. 3 of 1930.
R. Dis. No. 768-(ii)-I. T./29.

CENTRAL BOARD OF REVENUE.

New Delhi, the 15th March 1930.

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V. S. SUNDARAM,
Secretary, Central Board of Revenue.

To

All Commissioners of Income-tax.

GIPD—1192 CBR—24-3-30—1160.

Circular No. 3 of 1930.
R. Dis. No. 768-(ii)-I. T./29.

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New Delhi, the 15th March 1930.

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V. S. SUNDARAM,
Secretary, Central Board of Revenue.

To

All Commissioners of Income-tax.

GIPD—1192 CBR—24-3-30—1160.

Circular No. 3 of 1930.
R. Dis. No. 768-(ii)-I. T./29.

CENTRAL BOARD OF REVENUE.

New Delhi, the 15th March 1930.

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4. This supersedes Board's circular $\frac{\text{No. 24 of 1928,}}{\text{R. Dis. No. 624-I. T./28,}}$ dated the 22nd August 1928.

V. S. SUNDARAM,
Secretary, Central Board of Revenue.

To

All Commissioners of Income-tax.

GIPD—1192 CBR—24-3-30—1160.

[R.O.106(a).]

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 24/4/1930

No. 3397 Enclos. /

T.R.

A copy of the marginally* noted ~~letter, with enclosure~~ circular, is forwarded

*No. 3 of 1930
R.Dis. No.738-(ii)-I.T.
dated the 15th March, 1930,
from the Central Board of Revenue.

to the Collector & Assistant Commissioner of Income-tax, C & M Station, Bangalore, for information.

Secretary to the Resident.

21/4/30

1212—16-3-192.

25.6.30

OFFICE OF THE RESIDENT IN MYSORE
BANGALORE.
23 MAY 1930
Regd. No. 5517
File No. 320/29

Circular No.10 of 1930.
R.Dis.No.239(ii)I.T/30.

CENTRAL BOARD OF REVENUE.

Simla, the 15th May 1930.

CIRCULAR.

Appeals - Assistant Commissioner - Income-tax Officer promoted as - Appeals against orders by - Appointment of another Assistant Commissioner to hear - Indian Income-tax Act, XI-22-Section 5(4).

An Assistant Commissioner should not hear orders against his own orders passed as Income-tax Officer. When an Income-tax Officer on appointment as Assistant Commissioner, acting or permanent, is not transferred to another Assistant Commissioner's range, appeals against his orders as Income-tax Officer should be heard by another Assistant Commissioner appointed under Section 5(4) to hear such appeals.

S.P. Shah
Secretary, Central Board of Revenue.

To

All Commissioners of Income-tax.

Copy forwarded to the Asst. Commr. of Income-tax, C & M Station, Bangalore.

offg Secretary to the Resdt.

.D.C.
6.5.30.

Please co

OFFICE OF THE RESIDENT IN MYSORE.
BANGALORE.
27 MAY 1930
Regd. No. 5628
File No. 220/30

Circular No. 12 of 1930.

R. Dis. No. 313-I.T./30.

CENTRAL BOARD OF REVENUE.

Simla, the 19th May 1930.

C I R C U L A R.

Bad debts - Writing off in creditor's accounts. - Legal effect of -.

One of the contentions often put forward by assessees, or representatives of the Indian mercantile community, in regard to the writing-off of bad debts or irrecoverable loans, is that an assessee naturally defers writing-off a debt or loan to the latest possible date, because when he has once written it off he can no longer recover it by suit.

2. This contention is fallacious. A creditor who has written off a debt or loan in his accounts as bad or irrecoverable is not in any way debarred from suing for its recovery by the mere fact of writing it off.

A debtor's liability can only be extinguished by (i) law - e.g. limitation (ii) waiver by the creditor or (iii) satisfaction. The mere act of writing a debt or loan off does not amount to waiver, if it is communicated to the debtor the position may be different.

3. Unless there is, so to speak, privity between the creditor and debtor in regard to the writing-off, as (for example) when they meet and make up accounts, and it is agreed that a certain amount shall be paid and accepted in full satisfaction, the act of writing-off as such has no effect whatever in rendering the debt irrecoverable at law.

S.P Shah
23.5.30
Secretary, Central Board of Revenue.

No 4716 endr
11.6.30

To

All Commissioners of Income-tax.

Copy forwarded to the Asst Commr. of Income-tax, C & M Station, Bangalore.

(circ two spare copies)

offg. Secretary to the Resdt.

KSW
5-6-30

D.O.C.No.329-I.T/30.

CENTRAL BOARD OF REVENUE.

Simla, the 15th May 1930.

OFFICE OF THE RESIDENT IN MYSORE.
BANGALORE.
2 JUNE 1930
Regd. No. 5827
File No. 220/29

My dear Vachha,

Liability to tax - Chelsea pensions.

Your letter No.RT.275/29 dated 6.5.30.
My D.O.D.A.Dis.No.814(ii)-I.T/29 dated 28.11.29.

I enclose a copy of my D.O. quoted above which answers your question.

Yours sincerely,

Sd. A. Tottenham,

15.5.30.

Khan Bahadur J. B. Vachha, B.A., B.Sc.,
Commissioner of Income-tax, Bombay.

Circular No. 11 of 1930.
D.A.Dis.No.814-(ii)-I.T/30.

Copy forwarded to all Commissioners of Income-tax (except Bombay and Bengal).

By order etc.,

S. P. Shah

Secretary, Central Board of Revenue.

Copy forwarded to the Asst. Commr. of Income-tax, C & M Station, Bangalore.

offg Secretary to the Resdt.

F. P. Sx. No. [illegible]

Copy form [illegible] Bell Canada Northern Income Tax

(Accept [illegible] Tax [illegible]

[illegible] Dec. 1931.

[illegible] Dear Madam,

[illegible] Re [illegible]

About Index No. [illegible] dated [illegible]

[illegible] 1931 [illegible]

[illegible] copy of [illegible] dated [illegible]

[illegible] quoted [illegible]

[illegible] Yours [illegible]

[illegible] Income [illegible]

19.8.30.

[illegible]

[illegible]

F.P.Sx.No. 11 of 1931

Direct Tax No. 11 of 1931

F.P.Sx.No. [illegible]

[illegible] Confirm Doris [illegible] Revenue.

Copy of letter No.RT275/29, dated the 6th May 1930, from Commissioner of Income-tax Bombay Presidency, to the Secretary, Central Board of Revenue, Simla.

Chelsea Pensions - Liability of - Board's letter No.D.Dis.814(i)-I.T./29 of 28.11.1929 addressed to the Controller of Military Pension Accounts, Northern and Eastern Commands, Lahore.

I have the honour to invite attention to the above letter from the Board of which a copy has been sent to the income-tax Officer, Salaries Branch, Bombay, by the Treasury Officer, Jhansi Treasury, and shall be obliged if favoured with the Board's orders as to whether the above pensions are to be taxed or exempted from tax and excluded from the computation of the total income of the recipients concerned. They were being taxed here all along by the above Income-tax Officer since 1925-26 but objections have now been raised to the effect that they are covered by exemptions Nos.(29) and (30) on page 105 of the Income-tax Manual (3rd edition) and in the case of Mr. E. Ogdan, a guard in the G.I.P. Railway at Jhansi who gets a pension of this nature amounting to Rs.47/- P.M., the matter was referred to the Treasury Officer, Jhansi, by the Income-tax Officer, Salaries Branch, when the latter pointed out the above letter from the Board. (A copy of it is appended hereto for ready reference). In the circumstances I am obliged to trouble the Board as above.

814

Copy of a letter D.Dis.No.814(i)-I.T./29, dated the 28th November 1929, from the Secretary, Central Board of Revenue, to the Controller of Military Pension Accounts, Northern and Eastern Commands, Lahore.

Arrears - Income-tax - Beruord (Mr.G.H.) - Adjustment of - From pension debitable to Imperial Government.

Your letter No.A-1/2961/90, dated the 6th September 1929.

In reply to your letter quoted above, I am directed to say that the Commissioner of Income-tax, Bengal, is being instructed that income-tax should not be deducted from the Chelsea pension and that arrears of income-tax should not be recovered by stoppage of payment of the pension. This direction does not imply any decision as to the liability of the pension to Indian Income-tax.

Copy of letter No.RTS/29, dated the 6th May 1929, from Commissioner of Income-tax Bombay Presidency, to the Secretary, Central Board of Revenue, Simla.

Subject:- Income-tax Act, 1922 - Assessment of [illegible] Ltd., Bombay.

Reference:- Income-tax Bombay (Personal) No. [illegible] dated the 25th April 1929.

Your letter [illegible] No. dated the 6th September 1929.

In reply to your letter No. [illegible] dated the 25th April 1929, I am directed to say that in consultation with Income-tax, Central, Bombay, it was decided that Dividends paid out of profits earned before the 1st April 1922 should not be assessed, from the Dividends paid out of profits earned after the 1st April 1922 Income-tax should not be recovered by deduction at source

Copy of a demi-offical letter D.A.Dis. No.814-(ii)-I.T/29, dated the 28th November, 1929, from A.R.L. Tottenham, Esquire, C.I.E., I.C.S., to F.W. Strong, Esquire, I.C.S., Commissioner of Income-tax, Bengal, Calcutta.

ARREARS - INCOME TAX - BERNARD (MR. G.H.) - ADJUSTMENT OF. FROM PENSION DEBITABLE TO IMPERIAL GOVERNMENT.

Letter from the Controller of Military Pensions Accounts, Lahore, A-1/2961/90, dated 6.8.29.

I enclose a copy of the above. The question whether Chelsea Pensions are liable to Indian Income-tax is a difficult one that we do not wish to raise. Please instruct the Income-tax Officer that income-tax should not be charged on the Pension nor should arrears of income-tax be recovered by stoppage of payment of the Pensions.

2. The arrears of income-tax (excluding any amount charged on the pension, or in consequence of the inclusion of the pension in the pensioners total income, the recovery of which should be waived) should be recovered by resort to the other provisions of the Act for the recovery of arrears. Sec. 46(5) is merely permissive.

3. As the pension is only Rs.88 P.M. while the arrears are Rs.650, it seems evident that the Pensioner has other means besides his pension.

4. We are informing the Controller of these instructions and adding that they imply no decision as to the liability of the Pension to Indian income-tax.

D.D.C.
26.5.30.

D.D.C.
26.8.30.

Copy of letter No.A-1/2961/90, dated the 6th August 1929, from the Controller of Military Pension Accounts, Northern and Eastern Commands, Lahore, to the Military Accountant General, Simla.

Adjustment of Income-tax claims preferred by the Income-tax authorities from pensions debitable to Imperial Government.

Under Section 46(d)(5) of the Income-tax Act (XI of 1922) the Income-tax Officer, Calcutta, has issued a notice to the Controller of Military Accounts, Calcutta, requiring him to recover a sum of Rs.654-15-0 on account of arrears of income-tax from the pension of Mr. G.H. Barnard and to stop further payment of his pension until the amount is liquidated in full. Mr. Barnard is in receipt of a Chelsea Pension of 5/3d. a day, which comes to Rs.88/5/4 per mensem for a month of 30 days, converted at 1 sh. 6d the rupee (current rate of exchange). With reference to para 89 Financial Regulations Part I, a public claim against a pensioner is recoverable from his pension, but under clause 2 of the Preamble to pension Regulations for the Army in India, stoppages may only be effected from "Emoluments payable under the Army Regulations India". It does not, therefore, appear to me to be permissible to effect stoppages from the pension of a Chelsea pensioner whose pension is payable under Home Regulations but as the issue is an important one, I am referring it to you for confirmation of my views and also of my assumption that Income-tax is a "Public Claim" within the meaning of the term as used in Financial Regulations and the Preamble to Pension Regulations.

D.D.C.
26.5.30.